

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 587 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

MAHENDRAKUMAR RAMCHAND AAMERA

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner
MR KT DAVE AGP for Respondent Nos.1 to 3
MS PJ DAWAWALA for Respondent No. 4

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 16/03/2000

ORAL JUDGEMENT

#. The District Magistrate, Mehsana passed an order dated December 21, 1999, in exercise of powers under Section 3(2) of Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act,

1980 ("PBM Act" for short), detaining the petitioner-detenu under the PBM Act.

#. The grounds of detention indicate that the detaining authority found that the petitioner is the President of a Cooperative Society which has been given a license for sale of controlled kerosene. On inspection, it was found that the quota of kerosene granted was in fact not sold to the ration card holders but was found to have been disposed off unauthorisedly. The authority was satisfied that this was done by the petitioner for personal gain and that his activity was detrimental to the smooth supply of essential commodities like kerosene. He was, therefore, required to be detained under the PBM Act in order to prevent him from continuing his activities.

#. The detenu/petitioner challenges the order of detention by this petition under Article 226 of the Constitution of India on various grounds. However, Mr. Prajapati, learned advocate appearing for the petitioner has relied on the ground of delay caused in considering the representation made on behalf of the detenu by the Central Government. He has placed reliance on the affidavit-in-reply filed on behalf of the Union of India to substantiate his submissions. Representation dated 24th December, 1999 was received by the Central Government on 1st January, 2000. The report and the grounds of detention called for by the Central Government were sent by the State Government on 4th January, 2000 and received by the Central Government, 2000. Thereafter, two more representations dated 31st December, 1999 and 3rd January, 2000 were received by the Central Government on 11th January, 2000 and 12th January, 2000. At the instance of the competent authority, parawise comments of the State Government were called for and the same were received on 14th January, 2000. The representation was considered on 25th January, 2000 and therefore, Mr. Prajapati submitted that there is delay of about 11 days which is not explained and therefore, it has resulted into the denial of right of the detenu of making an effective representation. The petition, may therefore, be allowed.

#. Mr. K.T.Dave, learned AGP, representing the State of Gujarat and the detaining authority and Ms. P.J.Dawawala, learned Addl. Standing Counsel for the Union of India have opposed this petition.

#. Having regard to the rival side contentions, the question that requires to be addressed to by this Court is whether there is delay on the part of the Union of

India in considering the representation made on behalf of the detenu, and if so, whether it is explained, and if yes, whether that explanation is acceptable?

#. There is no dispute about the fact that the first representation dated 24th December, 1999 addressed to the State Government was forwarded by the State Government to the Central Government vide letter dated 30th December, 2000, which was received by the Central Government on 1st January, 2000 and the other two representations dated 30th December, 1999 and 3.1.2000 were addressed to the State Government were forwarded by the State Government to the Central Government which were received by the Central Government on 14th January, 2000. The Central Government considered the representations along with parawise remarks and rejected the representations on 25th January, 2000. Under no circumstances, it can be said that the lapse of a period between 14th January, 2000 to 25th January, 2000 is even attempted to be explained. Why the representation of the present detenu was not attended to immediately is not explained and therefore, this inordinate delay in considering the representation has resulted into infringement of right of the detenu of making an effective representation. The continued detention, therefore, would be vitiated and the petition, therefore, deserves to be allowed.

#. This petition is allowed. The impugned order of detention dated 21st December, 1999 is hereby quashed and set aside. The detenu - Mahendrakumar Ramchand Aamera, is hereby ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no order as to costs.

[A.L. DAVE, J.]

pirzada/-